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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FOX NEWS NETWORK, LLC,

Plaintiff,

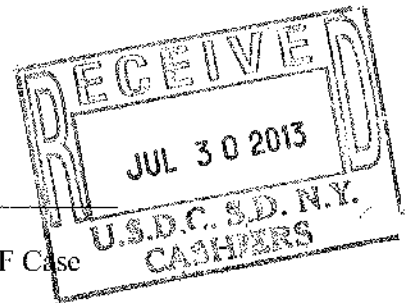
- against -

TVEYES, INC.,

Defendant.

Case No. _____

ECF Case _____



COMPLAINT

Plaintiff Fox News Network, LLC ("Fox News"), by and through its attorneys, Kirkland & Ellis LLP, for its Complaint, hereby alleges against Defendant TVEyes, Inc. ("TVEyes") as follows:

NATURE OF THE ACTION

1. This action seeks to recover damages that Fox News has suffered and to prevent the irreparable harm that continues to threaten Fox News as a result of TVEyes's willful infringement of Fox News's valuable intellectual property rights in and to its television programming and content. Specifically, TVEyes copies Fox News's proprietary programming

twenty-four hours a day as it is being telecast and makes the programming available for a subscription fee to Internet users on its website, <<http://www.tveyes.com>>.

2. As the following image illustrates, TVEyes makes verbatim reproductions of Fox News's programming and the closed captioning associated therewith. After unlawfully and willfully appropriating all of Fox News's content, TVEyes, without Fox News's consent, distributes, publicly performs and publicly displays that content on its own website:

The screenshot displays the TVEyes Media Monitoring Suite interface. At the top, the title 'Media Monitoring Suite' is on the left, and the TVEyes logo is on the right. Below the title bar, there are 'Log In' and 'Transcript' links. The main content area is titled 'Transcript' and shows details for a video recording of 'The O'Reilly Factor' from Fox News. The video player shows a still from the program with the title 'the O'Reilly FACTOR' and a timestamp of '7/3/2013 8:01:10 PM'. To the left of the video player, there is a transcript of the audio content, which includes a discussion about the American Center for Law and Justice and the federal bureau of investigation.

Media Monitoring Suite

[Log In](#) > [Transcript](#) [Log In](#)

Transcript [Log In](#)

Fox News - U.S. Cable
The O'Reilly Factor

+ National Viewership: 2,211,292
 National Publicity
 Value \$145,613.58

FNC 7/03/2013 8:01:13 PM: ...to enter the no spin zone. the factor begins right now. bill o'reilly, thanks for watching us tonight. the fbi and the irs. that is the subject of this evening's talking points memo. a conservative group called the american center for law and justice says that the federal bureau of investigation has not even contacted, has not even contacted any of the 41 groups involved in the class action suit against the irs. as you may know, the federal tax agency admits it targeted some conservative organizations and individuals, delaying tax exempt status and auditing some people because of their political beliefs. that's a huge scandal, if true. and it is the fbi's job to see if

the O'Reilly FACTOR

FOX NEWS

GERMAN MURDER TRIAL... ON WED. A LAW ENFORCEMENT EXPERT TESTIFIED

7/3/2013 8:01:10 PM

Webpage from TVEyes's Media Monitoring Suite Website

3. Upon information and belief, in a deliberate attempt to profit from Fox News's valuable intellectual property, TVEyes sells subscriptions to its Media Monitoring Suite service to users who can then view Fox News's programming on the TVEyes website (the "Infringing Service"). The Infringing Service directly competes with Fox News' telecasting and clip licensing services.

4. TVEyes is well aware that it must obtain a license, consent or authorization from Fox News in order to reproduce, distribute, publicly perform, publicly display and/or otherwise use Fox News's programming and content in this manner. In fact, TVEyes contacted Fox News seeking a license for its use of Fox News content. Fox News declined and demanded on multiple occasions that TVEyes cease its willful and infringing reproduction of Fox News's content. TVEyes has refused to comply and even to respond to Fox News's most recent letter. Upon information and belief, continues infringing Fox News's copyrights.

5. In sum, TVEyes has engaged, and continues to engage, in a pattern and practice of knowingly, intentionally and willfully infringing Fox News's copyrights. It is attempting to build a business by stealing Fox News's programming and content, and reproducing, distributing, publicly performing and publicly displaying purloined copies of that content. Moreover, despite Fox News's repeated requests that TVEyes cease its infringing activities, TVEyes has continued to misappropriate and profit from Fox News's copyrighted content.

6. Accordingly, due to TVEyes's blatant and willful infringement and refusal to cease and desist, Fox News has no choice but to file this lawsuit seeking injunctive relief and damages that it has suffered as a result of TVEyes's direct and contributory copyright infringement under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, and state law misappropriation.

PARTIES

7. Plaintiff Fox News is a limited liability company having its principal place of business in the State of New York and is qualified to do business and is doing business in the State of New York and in this judicial district. Fox News is, and at all times material herein was, owner of Fox News Channel and Fox Business Network and engaged in the business, among other things, of creating, producing, distributing and marketing television programs.

8. Defendant TVEyes is a corporation organized and existing under the laws of the State of Delaware and having offices in Fairfield, Connecticut and, upon information and belief, New York, New York. TVEyes owns and operates the website available at <<http://www.tveyes.com>>.

JURISDICTION AND VENUE

9. This action arises under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, and New York state law. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 and 1367.

10. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400.

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

I. Fox News and Its Award-Winning Programming

11. Fox News is one of the world's preeminent news organizations. It is engaged in the business of creating and producing original television programming and content, gathering news and information, and telecasting, publicly performing, publicly displaying, licensing and otherwise distributing its copyrighted programming and content. Fox News owns and operates two national cable channels: FOX News Channel ("FNC") and FOX Business Network ("FBN") (collectively, the "Fox News Networks").

12. FNC has been in operation since October 7, 1996. It is a 24-hour all-encompassing news service dedicated to delivering breaking news as well as political and business news. A top five cable network, FNC has been the most watched news channel in the country for more than ten years and, according to Public Policy Polling, is the most trusted television news source in the country. FNC is available in more than 90 million homes and dominates the cable news landscape, routinely notching the top ten programs in the genre.

13. FBN has been in operation since October 2007. It is a financial news channel delivering across all platforms real-time information that impacts both Main Street and Wall

Street. Headquartered in New York City—the financial capital of the world—FBN is the only business network to telecast in full-screen 720p high definition throughout the programming day. FBN is distributed to more than 60 million subscribers.

14. Among the copyrighted content created and distributed by Fox News is its award winning programming, such as *The O'Reilly Factor*, *Hannity*, *On the Record with Greta Van Susteren*, *The Five* and *Special Report with Bret Baier*.

15. *The O'Reilly Factor*, a news and talk show hosted by on air personality Bill O'Reilly, has been the highest rated cable news show for more than ten consecutive years. It first aired on FNC in 1996. Since that time, it has won two BMI Cable Awards and has been nominated for the TCA Award for Outstanding Achievement in News and Information.

16. *Hannity* is a television show hosted by Sean Hannity, one of the most prominent and influential conservative voices in the country. Since 2009, the program has offered a mix of news, commentary, interviews and branded segments, such as the Great American Panel, which is made up of three nightly in-studio guests from across the political spectrum who discuss various issues.

17. *On the Record with Greta Van Susteren* is a prime-time news and interview program, which launched in February 2002. Ms. Susteren has conducted numerous high-profile interviews, including, but not limited to, interviews of former Presidents George H. W. Bush, Bill Clinton and George W. Bush. *On the Record* is the highest rated cable news program in the 10:00 – 11:00 p.m. timeslot.

18. *The Five* is a talk show featuring varying personalities and guests that discuss current political issues and pop culture. It features a rotating panel of hosts, including Andrea

Tantaros, Bob Beckel, Dana Perino, Eric Bolling, Greg Gutfeld, Juan Williams and Kimberly Guilfoyle.

19. *Special Report with Bret Baier* is a news and political commentary program that airs live on weekdays from 6:00 – 7:00 p.m. ET. During its time slot, it is the number one news program on cable. Anchored by Washington news veteran Bret Baier, *Special Report* provides in-depth analysis of news and political issues.

II. Distribution of Fox News's Programming

20. Fox News' programming and content are distributed via the Fox News Networks, which telecast Fox News's content 24 hours a day, every day. From these telecasts, Fox News derives revenue both from its cable company licensees and from its advertising partners. Cable companies pay Fox News a royalty based on subscriber fees for access to Fox News's valuable content. Advertisers pay Fox News a fee to telecast advertisements during commercial breaks in Fox News's programming. Both sources of revenue are determined, in part, based on the viewership of the Fox News Networks.

21. In addition to these telecasts, Fox News offers select video clips of its programming and content via its own websites, including <<http://www.foxnews.com>> and <<http://www.foxbusiness.com>>; through licensed websites, such as Hulu <<http://www.hulu.com>> and YouTube <<http://www.youtube.com>>; and via the ITN Source archival footage library, which is available at <<http://www.itnsource.com>>. Not all of Fox News's content is available on the Internet; much of its content remains exclusive to the Fox News Networks.

22. Fox News receives revenues from each authorized website. With regard to video clips on Fox News's own websites, Fox News is paid by advertisers to embed advertising such

that viewers will see the advertising before reaching Fox News's content. The inclusion of Fox News's programming on Hulu and YouTube provides similar revenues.

23. ITN Source, on behalf of Fox News, licenses past Fox News content through its online library of video clips. ITN Source's library includes over fifty thousand Fox News clips selected from the full range of Fox News programming and content. Furthermore, ITN Source offers to seek licenses from Fox News for clips not already offered in the online catalog. Fox News derives revenue from all licenses sold by ITN Source.

III. Fox News's Valuable Intellectual Property Rights in its Programming

24. Fox News has invested vast resources, including time, effort, talent, creativity and money, to produce its programming. Its programming has a large following of fans throughout the world making the Fox News Networks two of the most popular channels in television today. Fox produces up-to-the-minute news reporting on the timely matters that most interest consumers. In addition to high-quality news reporting, Fox News produces creative and expressive programming—including myriad videos, sounds and images—that is original to Fox News and constitutes copyrightable subject matter under the laws of the United States.

25. Each Fox News episode is separately written, produced and directed and constitutes a separate copyrighted work as a television motion picture. Fox News also holds the copyrights for each episode's closed captioning.

26. While registering each episode produced on Fox News's two 24-hour cable networks would be unduly burdensome, Fox News has registered with the United States Copyright Office a representative sample of its most recent programming as television motion pictures (the "Works"). Included among the Works are the following episodes:

- Hannity – Episode of July 3, 2013, 9:00 p.m.
In this episode, Hannity airs his exclusive interview with George Zimmerman and attorney Mark O'Mara. They discuss what happened on

the night of the shooting of Trayvon Martin, straighten out the record over rumors that Hannity offered to pay for Zimmerman's legal defense, and allow Zimmerman to deliver a message to the Martin family and the public.

- *The O'Reilly Factor* – Episode of July 3, 2013, 8:00 p.m.
In this episode, O'Reilly comments on the FBI's failure to aggressively investigate the IRS, discusses the removal of anti-terror ads under pressure from the far left, covers the latest on the murder trial of George Zimmerman, and reports on the coup in Egypt.
- *Fox Report with Shepard Smith* – Episode of July 3, 2013, 7:00 p.m.
In this episode, Shepard Smith reports on the murder trial of George Zimmerman, the military coup in Egypt, and the 150th anniversary of the Battle of Gettysburg.
- *The O'Reilly Factor* – Episode of July 2, 2013, 8:00 p.m.
In this episode, O'Reilly comments on the murder trial of George Zimmerman, analyzes with Charles Krauthammer the public's opinion of the Supreme Court, discusses with John Stossel Paula Deen's shattered career, and reports on the death of firefighters in an Arizona wildfire.
- *Special Report with Bret Baier* – Episode of July 2, 2013, 6:00 p.m.
In this episode, Shannon Bream fills in for Bret Baier and reports on unrest in Egypt, the NSA leaks and Edward Snowden, the murder trial of George Zimmerman, the implementation of the Affordable Care Act, government sequestration, waste in the social security system, the BP oil spill, and the 150th anniversary of the Battle of Gettysburg.
- *The Five* – Episode of July 2, 2013, 5:00 p.m.
This episode features Andrea Tantaros, Bob Beckel, Eric Bolling, Dana Perino, and Greg Gutfeld discussing Islamic extremism, unrest in Egypt, the publicity push for the Affordable Care Act, the NSA leaks and Edward Snowden, a British survey about pretending to be more clever or cultured to impress others, and a 19-year-old jailed over a threat made on Facebook. Greta Van Susteren guests to discuss the murder trial of George Zimmerman.
- *Hannity* – Episode of June 28, 2013, 9:00 p.m.
In this episode, Hannity covers recent developments in the murder trial of George Zimmerman, airs highlights of a previously recorded interview with George Zimmerman, and comments on allegations that racism caused the shooting of Trayvon Martin.
- *Special Report with Bret Baier* – Episode of June 28, 2013, 6:00 p.m.
In this episode, Bret Baier reports on congressional investigations into IRS misconduct, the NSA leaks and Edward Snowden, President Obama's trip

to Africa, the murder trial of George Zimmerman, the arrest of NFL-star Aaron Hernandez, gun legislation, and the U.S. military presence in Afghanistan.

- *The Five* – Episode of June 28, 2013, 5:00 p.m.
This episode features Kimberly Guilfoyle, Bob Beckel, Eric Bolling, Dana Perino, and Greg Gutfeld discussing the murder trial of George Zimmerman, the arrest of NFL-star Aaron Hernandez, the NSA leaks and Edward Snowden, Alec Baldwin's salacious tweets, responses to Facebook questions from fans, workplace drinking, and a New York court's ruling that tip jars at Starbucks must be shared with supervisors.
- *On the Record with Greta Van Susteren* – Episode of June 26, 2013, 10:00 p.m.
This episode covers the ongoing congressional investigations into the IRS, murder charges against NFL-star Aaron Hernandez, the murder trial of George Zimmerman, a home invasion caught on camera in New Jersey, and the landmark Supreme Court decisions on DOMA and Proposition 8.
- *Fox Report with Shepard Smith* – Episode of November 2, 2012, 7:00 p.m.
In this episode, Shepard Smith reports on gas rationing in part of New Jersey, the cancellation of the New York City marathon, and the final jobs report before Americans head to the polls.
- *The Five* – Episode of November 2, 2012, 5:00 p.m.
This episode features Andrea Tantaros, Bob Beckel, Eric Bolling, Dana Perino, and Greg Gutfeld discussing the devastation from Hurricane Sandy and the current state of the presidential race.
- *On the Record with Greta Van Susteren* – Episode of October 31, 2012, 10:00 p.m.
This episode focuses on the current state of the presidential race, where a new poll out six days before the election shows that the contest is dead even.
- *Hannity* – Episode of October 31, 2012, 9:00 p.m.
In this episode, Hannity discusses looting, gas shortages, power outages, and food shortages causing chaos throughout the North East. Hannity comments on President Obama's response to Hurricane Sandy and shows how the President is abandoning bipartisanship to misrepresent Governor Romney's record and stance on the issues in the last week before the election.
- *The O'Reilly Factor* – Episode October 31, 2012, 8:00 p.m.
In this episode, O'Reilly comments on the dangerous and extreme elements of the Democratic Party threatening violence if Barack Obama loses reelection and on Al Gore and the far left blaming Hurricane Sandy

on global warming as an election ploy. Guests on this episode include Denis Miller, Karl Rover, and Dick Morris.

- *Special Report with Bret Baier* – Episode of October 29, 2012, 6:00 p.m.
In this episode, Bret Baier reports on the historic Hurricane Sandy bearing down on the Atlantic Coast and on the havoc the monster storm may wreak on the presidential campaigns.
- *Hannity* – Episode of October 22, 2012, 11:05 p.m.
This special edition episode of Hannity was broadcast live from the spin room following a Presidential debate. Hannity presents his views of the two very different candidates that took the stage and a debate that was frenetic – and at times desperate. Hannity discusses the debate with Rubio Marco, Governor Sarah Palin, and John Sununu.
- *Special Report Investigates: Death & Deceit in Benghazi* – Episode of October 19, 2012, 10:00 p.m.
In this special broadcast, Bret Baier reports on the terrorist attack in Benghazi that resulted in the death of four Americans at the U.S. consulate on the anniversary of 9/11. Baier's reporting team tries to answer the important questions: Who did this, and how? Should our government have seen it coming? Did President Obama try to hide the truth? Is this a huge scandal that exposes a failed Obama foreign policy, or is Mitt Romney just saying it is?
- *The O'Reilly Factor* – Episode October 16, 2012, 8:00 p.m.
In this episode, broadcast just before the presidential debate at Hofstra University, O'Reilly comments on the current state of the election with the latest polling and with analysis from Charles Krauthammer, Larry Sabato, and Scott Rasmussen. Additionally, supported with investigation by Colonel David Hunt, O'Reilly addresses the growing Libya scandal and reports that the State Department heard the terror attack live.

Attached hereto as **Exhibit A**, and incorporated herein by reference, are true and correct copies of the Certificates of Registration issued by the Copyright Office for the Works. The attached certificates reflect the date upon which Fox News applied for a Certificate of Registration, the date on which the certificate was issued and the registration number assigned.

27. The Works—which feature unique commentary and reporting by Fox News employees, various graphics and images, the selection of distinctive and stylized camera angles, and the closed captioning associated with each episode—are creative expression of news events

that were the product of editorial discretion and substantial journalistic skills, resources, and creative energies.

28. The Works also are of great value to Fox News and are watched weekly by millions of viewers. In fact, on multiple occasions, the viewerships for episodes of *Hannity* and *The O'Reilly Factor* have been between four and six million.

29. Fox News is, and at all times material herein was, the sole owner and proprietor of all right, title and interest in and to the copyrights in the Works. The copyrights in the Works are presently valid and subsisting and were valid and subsisting at all times affecting the matters complained of herein.

IV. TVEyes

30. TVEyes is engaged in the parasitic business of offering and providing to the public for a fee copies of television programming and content created by others. According to its website, TVEyes delivers “real-time TV and radio content on an international platform for a flat fee.” Upon information and belief, while TVEyes originally followed an advertising revenue-based business model, today, TVEyes charges a subscription fee of \$500 per month per user for the use of the Infringing Service. The Infringing Service is not publicly available.

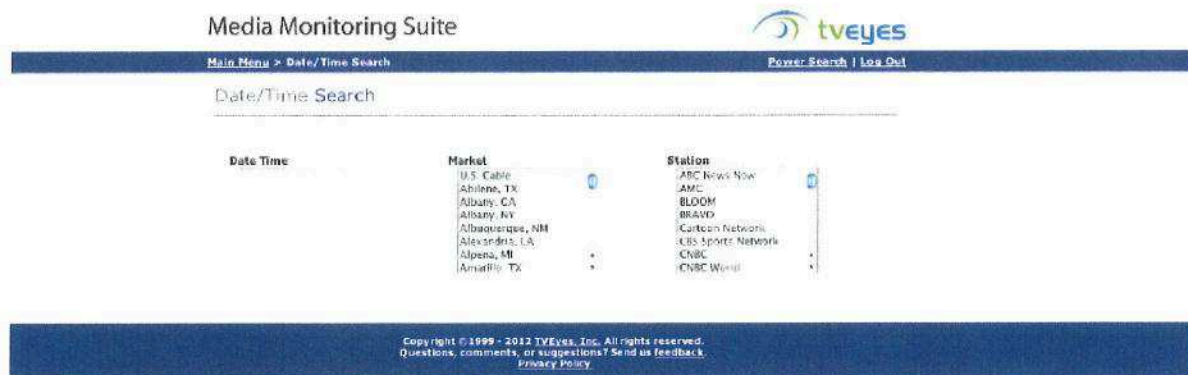
31. As a “media monitoring company,” TVEyes records broadcast and cable television and radio content twenty-four hours each day from various media markets including, in the United States, “all 210 DMAs [Designated Market Areas] and more than 1,600 stations including all major network affiliates and network cable television stations.” The copies of broadcasts and cable television and radio content made by TVEyes and offered by TVEyes to its users, are saved, stored or maintained on servers or other computer equipment owned or leased by, maintained on behalf of, or otherwise under the direction or control of, TVEyes.

32. TVEyes makes all of the infringing content it records available for viewing or listening by its users without any commentary or analysis. When a user selects one of the Infringing Service's videos, TVEyes distributes, publicly performs and publicly displays the content by streaming the video content and displaying the closed captioning from TVEyes's servers to the user's computer.

33. Videos are available contemporaneously with their original broadcasts, as well as through the Infringing Service's archive of media clips and transcripts. As described in the Infringing Service's User Guide, TVEyes provides its users with "a real time visual snapshot of what is being broadcast across each channel in the TVEYES footprint." Once a user selects a station, TVEyes distributes, publicly performs and publicly displays a "real time transcript and video for the selected station."

34. The Infringing Service contains a search function that permits TVEyes's users to search for keywords, phrases and topics found in, upon information and belief, the closed captioning associated with the broadcast and cable television and radio content copied by TVEyes. Unlike Internet search engines, such as Google Web Search and Bing, TVEyes does not index and enable searches of content published and available on the Internet. Instead, TVEyes's search function only searches within TVEyes's own archive of unauthorized copies of broadcast, cable and radio content that TVEyes illicitly copied. Thus, TVEyes does not make it easier for Internet users to find content residing on other websites. Rather, it simply makes it easier for TVEyes to publicly perform, publicly display and distribute TVEyes's unauthorized reproductions of others' content.

35. As the screenshot below illustrates, users of the Infringing Service also are able to locate programming and content by date range, specific stations and markets.



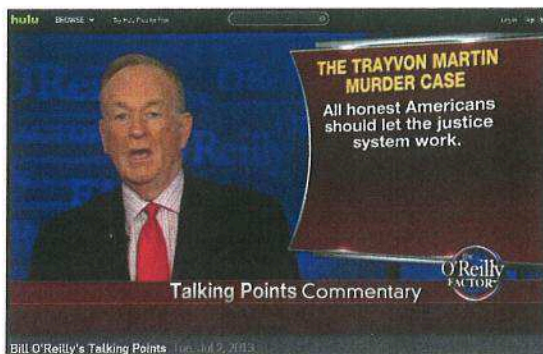
Infringing Service's Date/Time Search

Thus, the Infringing Service permits users to view programming and content days or months after it was originally broadcast.

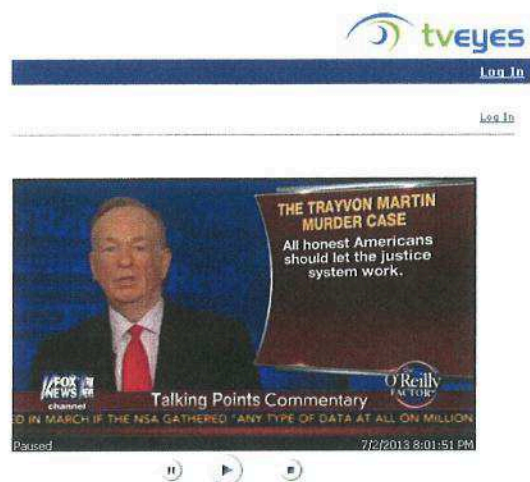
36. Users of the Infringing Service also can download an unlimited number of copies of the content that TVEyes illicitly reproduces. Moreover, the Infringing Service includes a clip editor that allows users to create derivative works based upon TVEyes's infringing content.

V. TVEyes's Infringement of and Commercial Exploitation of Fox News's Copyrighted Programming

37. TVEyes has taken upon itself, without any license or authorization from Fox News, to misappropriate the entirety of the Works that Fox News has developed at great expense and to reproduce, to distribute, to publicly perform and/or to publicly display verbatim copies of the Works. TVEyes copies Fox News's programming twenty-four hours each day as that programming is being telecast by Fox News or its licensees. As the side-by-side screenshots below illustrate, TVEyes then makes the programming, including, but not limited to, the Works, available to Internet users around the world through the Infringing Service.



Authorized Clip of the July 2, 2013 Episode of
The O'Reilly Factor on Hulu.com



Infringing Copy of the July 2, 2013 Episode of
The O'Reilly Factor on TVEyes



Authorized Clip of the June 28, 2013 Episode of
Hannity on FoxNews.com



Infringing Copy of the June 28, 2013 Episode of
Hannity on TVEyes



Authorized Clip of the June 26, 2013 Episode of *On the Record* on FoxNews.com



Infringing Copy of the June 26, 2013 Episode of *On the Record* on TVEyes

38. In so doing, TVEyes infringes Fox News's valuable and proprietary creative expression and violates Fox News's right to the exclusive use of its creative products in contraventions of its copyrights in the Works. TVEyes also free rides on the expense and effort Fox News has invested in producing its premium, up-to-the-minute news reporting.

39. By virtue of its infringing activities, TVEyes has developed a business that, upon information and belief, produces millions of dollars in revenue each year.

40. Moreover, TVEyes directly competes with Fox News's own attempts to monetize its works. First, users of the Infringing Service are able to substitute their viewership of the Fox News Networks by watching TVEyes's contemporaneous reproductions of Fox News's telecasts. Second, the Infringing Service serves as a substitute for users watching Fox News programming on Fox News's own websites and the websites of its licensees. Third, when users wish to search, download and use video clips from past telecasts on specific content, the Infringing Service substitutes for ITN Source, Fox News's licensed clip library.

VI. TVEyes Refuses to Cease Infringing Fox News's Copyrights and Appropriating Fox News's Works

41. TVEyes knows that it must obtain a license or other authorization from Fox News in order to use the Works in the manner described above. TVEyes's Director of Client Relations, Robert Bruder, contacted Fox News seeking to form a partnership. Mr. Bruder notified Fox News that TVEyes had been using Fox News's content without authorization and that TVEyes now sought a license from Fox News in exchange for which it would compensate Fox News. In response, Fox News demanded that TVEyes cease its use of Fox News's content. TVEyes, however, refused to take down the infringing content.

42. Fox News again contacted TVEyes and demanded that its content be taken down immediately. TVEyes again refused to take down the infringing content.

43. Due to TVEyes's repeated refusals, Fox News, through its outside counsel, sent TVEyes on April 16, 2013 the letter attached as **Exhibit B**. In the letter, Fox News's counsel set forth in detail, citing recent and controlling case law, why the Infringing Service's use of Fox News's content constituted copyright infringement. The letter also demanded that TVEyes cease any further use or distribution of Fox News's content. Fox News's counsel reiterated its demand in a subsequent e-mail exchange with TVEyes Founder and CEO, David Ives.

44. TVEyes never responded substantively to the letter.

45. Despite Fox News's repeated efforts to resolve this dispute without court intervention, TVEyes has not removed Fox News's content from the Infringing Service and, upon information and belief, continues to use Fox News's content in the manner described above.

46. Moreover, upon information and belief, TVEyes recently has expanded its use of Fox News's content by, among other things, creating a mobile phone application for the

Infringing Service and increasing its international presence, both of which are designed to build TVEyes's user base. By doing so, TVEyes increasingly diverts users from Fox News's telecasts and licensed clip services.

VII. The Harm to Fox News

47. As discussed above, Fox News produces cable television programs for which it receives revenue from subscriber fees, advertising in telecasts, advertising embedded in content made available on the Internet, and clip licensing.

48. TVEyes's willful infringement robs Fox News of these revenues. Its verbatim reproduction of the Works, without consent, (1) allows TVEyes to profit commercially without paying the traditional price, and (2) devalues and causes substantial harm to the value of the Works. Thus, Fox News has been damaged by TVEyes's conduct in an amount to be determined according to proof.

49. Moreover, upon information and belief, TVEyes is aware that its profits come at the expense of content producers like Fox News. Nevertheless, TVEyes does not collect fees for Fox News. Instead, it monetizes Fox News's content—which one TVEyes employee has described as “clearly very significant”—and keeps the profits for itself, thus undermining Fox News's investment in its content in order to create its award-winning programming. In so doing, TVEyes also undermines the incentive for Fox News to continue to produce such high-quality programming.

50. TVEyes's acts of reproduction, public performance and public display of the Works are just a sample of the massive ongoing pattern and practice of infringement undertaken by TVEyes. All day, each and every day, TVEyes continues to create unauthorized copies of Fox News's programming and content as it is aired by Fox News.

51. Upon information and belief, unless enjoined by this Court, TVEyes intends to continue to infringe upon Fox News's copyrights and otherwise to profit from Fox News's works.

52. Accordingly, Fox News has suffered irreparable damages. Fox News has no adequate remedy at law to redress all of the injuries that TVEyes has caused and intends to cause by its conduct. Fox News will continue to suffer irreparable damage until TVEyes's actions alleged above are enjoined by this Court.

CLAIMS FOR RELIEF

COUNT I

Copyright Infringement (17 U.S.C. § 101 *et seq.*)

53. Fox News repeats and realleges each and every allegation above as if fully set forth herein.

54. The Works are original, creative works and copyrightable subject matter under the laws of the United States.

55. Fox News is the owner of valid copyrights in the Works, and the Register of Copyrights has issued valid Certificates of Registration as indicated in Exhibit A.

56. Fox News has complied in all respects with 17 U.S.C. §§ 101, *et seq.*, and has secured the exclusive rights and privileges in and to the copyrights in its television programming and content.

57. By its actions, alleged above, TVEyes has infringed and will continue to infringe Fox News's copyrights in and relating to Fox News's programming and content by, *inter alia*, reproducing, distributing, publicly performing and publicly displaying the Works without any authorization or other permission from Fox News.

58. TVEyes's infringement of Fox News's copyrights has been deliberate, willful and in utter disregard of Fox News's rights.

59. Upon information and belief, as a direct and proximate result of its wrongful conduct, TVEyes has obtained benefits, including, but not limited to, investments in the company to which TVEyes is not entitled.

60. As a direct and proximate result of TVEyes's wrongful conduct, Fox News has been substantially and irreparably harmed in an amount not readily capable of determination. Unless restrained by this Court, TVEyes will cause further irreparable injury to Fox News.

61. Fox News is entitled to injunctive relief enjoining TVEyes, its agents and employees, and all persons acting in concert or participation with it, from engaging in any further infringement of Fox News's copyrighted programming and content.

62. Fox News is further entitled to recover from TVEyes the damages, including attorneys' fees and costs, it has sustained and will sustain, and any gains, profits and advantages obtained by TVEyes as a result of its acts of infringement as alleged above. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by Fox News, but will be established according to proof at trial. Fox News also is entitled to recover statutory damages for TVEyes's willful infringement of its copyrights.

COUNT II
State Law Misappropriation (Hot News)

63. Fox News repeats and realleges each and every allegation above as if fully set forth herein.

64. Fox News incurs substantial expense producing and distributing to customers its premium daily and weekly up-to-the-minute news programming and commentary.

65. The value of much of Fox News's product is extremely time sensitive. TVEyes offers Fox News content to consumers before Fox News has had a chance to fully distribute its content to its consumers through authorized services.

66. TVEyes's use of the content that Fox News creates constitutes free-riding on Fox News's significant investment in preparing, producing, and distributing premium news reporting on the specific news matters that interest customers.

67. TVEyes's subscription services directly compete with Fox News and its licensed partners' services by distributing Fox News's valuable content to the same consumers that Fox News and its licensed partners target. TVEyes infringing services convey the appearance that TVEyes is a legitimate distributor of Fox News content, intentionally misleading consumers to believe that there is a connection or association between Fox News and TVEyes where there is none.

68. If TVEyes is allowed to continue its willful free-riding on Fox News's programming, it will substantially reduce Fox News's incentive and ability to produce new content, jeopardizing both the quality and the quantity of premium news reporting available to consumers.

69. TVEyes's actions constitute "hot news" misappropriation under New York common law. TVEyes has acted willfully, in bad faith, and without regard for Fox News's rights.

70. Fox News has suffered and will continue to suffer immediate, severe, and irreparable harm to its business and reputation. Fox News has no remedy at law that will adequately address all of the past and continuing harm it has and will suffer as a result of TVEyes's past and continuing conduct.

COUNT III
State Law Misappropriation (Direct Competition)

71. Fox News repeats and realleges each and every allegation above as if fully set forth herein.

72. As detailed above, Fox News expends considerable time and expense in producing and distributing its premium programming and content. Fox News's content and its reputation have significant monetary value to Fox News.

73. TVEyes uses Fox News's work in competition with it, including, but not limited to, by providing an archival clip service in competition with Fox News's licensing partner, ITN Source. TVEyes's service also allows customers to watch Fox programming online in competition with Fox News's cable partners, Fox News's own websites, and its website partners. TVEyes's contemporaneous distribution of Fox News's content directly competes with Fox News cable telecasts.

74. TVEyes has willfully misappropriated Fox News's property rights in its programming and content. By intentionally misappropriating Fox News content and passing it off to consumers through its unauthorized sales and services, TVEyes intentionally misleads the public to believe that there is a connection or association between Fox News and TVEyes where there is none.

75. As a result, TVEyes gains a special advantage over Fox News because TVEyes bears none of the expense of producing news programming and content on the news matters that interest viewers. Upon information and belief, TVEyes has made, and continues to make, substantial profits as a direct result of its appropriation of Fox News content.

76. As a result of TVEyes's misappropriation, Fox News has suffered significant commercial and monetary damages as well as injury to its reputation.

77. Fox News has no remedy at law that will adequately address all of the past and continuing harm it has and will suffer as a result of TVEyes's past and continuing conduct. As a direct and proximate result of TVEyes's conduct, Fox News has suffered and will continue to suffer damages in an amount presently unknown and to be ascertained at time of trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Fox News respectfully requests judgment against Defendant TVEyes as follows:

- A. Find that TVEyes has infringed Fox News's copyrights in the Works;
- B. Find a substantial likelihood that TVEyes will continue to infringe Fox News's intellectual property unless enjoined from doing so;
- C. Issue a preliminary and permanent injunction enjoining TVEyes, and its agents, servants, employees, attorneys, successors and assigns, and all persons, firms and corporations acting in concert with it, from directly or indirectly infringing Fox News's copyrights, including, but not limited to, reproducing, distributing, publicly performing or publicly displaying any of Fox News's programming or content in connection with any service offered by TVEyes, from engaging in further acts of misappropriation, and from participating or assisting in any such activity;
- D. Order TVEyes to render a full and complete accounting to Fox News for TVEyes's profits, gains, advantages or the value of the business opportunities received from the foregoing acts of infringement;
- E. Enter judgment for Fox News against TVEyes for all damages suffered by Fox News and for any profits or gain by TVEyes attributable to infringement of Fox News's intellectual property in amounts to be determined at trial;

- F. Enter judgment for Fox News against TVEyes for statutory damages based upon TVEyes's willful acts of infringement pursuant to the Copyright Act, 17 U.S.C. § 101 *et seq.*;
- G. Enter judgment for Fox News against TVEyes for punitive damages in amounts to be determined at trial;
- H. Award Fox News costs and disbursement of this action, including reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505;
- I. Award Fox News pre-judgment and post-judgment interest, to the fullest extent available, on the foregoing; and
- J. Grant such other, further and different relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Fox News demands a trial by jury on all issues so triable in this action.

Dated: New York, New York
July 30, 2013

KIRKLAND & ELLIS LLP



Dale M. Cendali
Joshua L. Simmons
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
dale.cendali@kirkland.com
joshua.simmons@kirkland.com

Attorneys for Plaintiff
Fox News Network, LLC

Exhibit A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-818-109

**Effective date of
registration:**

December 26, 2012

Title

Title of Work: On the Record with Greta Van Susteren - Episode of Wednesday 10/31/2012 10:00 PM

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: October 31, 2012

Nation of 1st Publication: United States

Author

■ **Author:** Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: December 11, 2012

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-818-110

**Effective date of
registration:**

December 26, 2012

Title

Title of Work: Special Report with Bret Baier - Episode of Monday 10/29/2012 6:00 PM

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: October 29, 2012

Nation of 1st Publication: United States

Author

■ **Author:** Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: December 11, 2012

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-818-111

**Effective date of
registration:**

December 26, 2012

Title

Title of Work: The Five - Episode of Friday 11/02/2012 5:00 PM

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: November 2, 2012

Nation of 1st Publication: United States

Author

■ **Author:** Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: December 11, 2012

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-818-112

**Effective date of
registration:**

December 26, 2012

Title

Title of Work: The O'Reilly Factor - Episode of Tuesday 10/16/2012 8:00 PM

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: October 16, 2012

Nation of 1st Publication: United States

Author

■ **Author:** Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: December 11, 2012

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-818-113

**Effective date of
registration:**

December 26, 2012

Title

Title of Work: The O'Reilly Factor - Episode of Wednesday 10/31/2012 8:00 PM

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: October 31, 2012

Nation of 1st Publication: United States

Author

Author: Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: December 11, 2012

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-818-114

Effective date of
registration:

December 26, 2012

Title

Title of Work: Special Report Investigates: Death & Deceit in Benghazi - Episode of Friday
10/19/2012 10:00 PM

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: October 19, 2012

Nation of 1st Publication: United States

Author

■ **Author:** Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: December 11, 2012

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-818-118

**Effective date of
registration:**
December 26, 2012

Title

Title of Work: The Fox Report with Shepard Smith - Episode of Friday 11/02/2012 7:00 PM

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: November 2, 2012

Nation of 1st Publication: United States

Author

■ **Author:** Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: December 11, 2012

Correspondence: Yes

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-818-120

**Effective date of
registration:**
December 26, 2012

Title

Title of Work: Hannity - Episode of Monday 10/22/2012 11:05 PM

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: October 22, 2012

Nation of 1st Publication: United States

Author

■ **Author:** Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: December 11, 2012

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PA 1-818-122

Effective date of
registration:

December 26, 2012

Title

Title of Work: Hannity - Episode of Wednesday 10/31/2012 9:00 PM

Completion/Publication

Year of Completion: 2012

Date of 1st Publication: October 31, 2012

Nation of 1st Publication: United States

Author

■ **Author:** Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: December 11, 2012

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PAu 3-679-883

Effective date of
registration:
July 15, 2013

Title

Title of Work: The O'Reilly Factor - Episode of Wednesday 07/03/2013 8:00 PM

Completion/Publication

Year of Completion: 2013

Author

■ Author: Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: July 11, 2013

Certificate of Registration



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Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PAu 3-679-885

Effective date of
registration:
July 15, 2013

Title

Title of Work: The O'Reilly Factor - Episode of Tuesday 07/02/2013 8:00 PM

Completion/Publication

Year of Completion: 2013

Author

■ Author: Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: July 11, 2013

Certificate of Registration



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Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PAu 3-679-887

Effective date of
registration:
July 15, 2013

Title

Title of Work: Hannity - Episode of Wednesday 07/03/2013 9:00 PM

Completion/Publication

Year of Completion: 2013

Author

■ Author: Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: July 11, 2013

Certificate of Registration



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Maui A. Pallante

Register of Copyrights, United States of America

Registration Number

PAu 3-679-888

Effective date of
registration:

July 15, 2013

Title

Title of Work: Hannity - Episode of Friday 06/28/2013 9:00 PM

Completion/Publication

Year of Completion: 2013

Author

■ Author: Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: July 11, 2013

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Mauri A. Pallante

Register of Copyrights, United States of America

Registration Number
PAu 3-679-890

Effective date of
registration:
July 15, 2013

Title

Title of Work: The Fox Report with Shepard Smith - Episode of Wednesday 07/03/2013 7:00 PM

Completion/Publication

Year of Completion: 2013

Author

■ Author: Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: July 11, 2013

Certificate of Registration



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Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PAu 3-679-891

Effective date of
registration:
July 15, 2013

Title

Title of Work: On the Record with Greta Van Susteren - Episode of Wednesday 06/26/2013 10:00 PM

Completion/Publication

Year of Completion: 2013

Author

■ Author: Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: July 11, 2013

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Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PAu 3-679-895

Effective date of
registration:
July 15, 2013

Title

Title of Work: The Five - Episode of Friday 06/28/2013 5:00 PM

Completion/Publication

Year of Completion: 2013

Author

■ Author: Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: July 11, 2013

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Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PAu 3-679-898

Effective date of
registration:
July 15, 2013

Title

Title of Work: The Five - Episode of Tuesday 07/02/2013 5:00 PM

Completion/Publication

Year of Completion: 2013

Author

■ Author: Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: July 11, 2013

Certificate of Registration



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Maria A. Pallante

Register of Copyrights, United States of America

Registration Number

PAu 3-679-900

Effective date of
registration:

July 15, 2013

Title

Title of Work: Special Report with Bret Baier - Episode of Tuesday 07/02/2013 6:00 PM

Completion/Publication

Year of Completion: 2013

Author

■ **Author:** Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: July 11, 2013

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Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
PAu 3-679-902

Effective date of
registration:
July 15, 2013

Title

Title of Work: Special Report with Bret Baier - Episode of Friday 06/28/2013 6:00 PM

Completion/Publication

Year of Completion: 2013

Author

Author: Fox News Network, LLC

Author Created: entire motion picture

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Fox News Network, LLC

1211 Avenue of the Americas, New York, NY, 10036, United States

Certification

Name: Joshua L. Simmons

Date: July 11, 2013

Exhibit B

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

601 Lexington Avenue
New York, New York 10022

(212) 446-4800

www.kirkland.com

Dale Cendali
To Call Writer Directly:
(212) 446-4846
dale.cendali@kirkland.com

Facsimile:
(212) 446-4900

April 16, 2013

Via E-mail and Federal Express

Mr. David Ives
TVBytes Inc.
2150 Post Road
Fairfield, CT 06824
dives@tveyes.com

Re: Infringing Use of Fox News Content

Dear Mr. Ives:

We are intellectual property counsel for Fox News Network, LLC ("Fox News"). Fox News is one of the world's preeminent news organizations. It is engaged in the business of creating and producing original television programming and content, gathering news and information, and broadcasting, publicly performing, licensing and otherwise distributing its copyrighted programming and content (the "Fox News Content").

As you know, Fox News repeatedly has requested that TVBytes take down the Fox News Content and cease infringing its material, but TVBytes has refused. TVBytes, without any license or authorization from Fox News, has misappropriated the entirety of the Fox News Content by copying it twenty-four hours each day as that programming is being telecast by Fox News or its licensees. TVBytes also is making the Fox News Content available to Internet users around the world through its website.

In so doing, TVBytes infringes Fox News's valuable and proprietary creative expression and violates Fox News's right to the exclusive use of its creative products. 17 U.S.C. § 106. In fact, a court in the Southern District of New York recently found that a similar online media monitoring service's copying of news content constituted copyright infringement. *Associated Press v. Meltwater U.S. Holdings, Inc.*, No. 12 Civ. 1087, 2013 WL 1153979 (S.D.N.Y. Mar. 21, 2013). In that case, the defendant claimed that its services were that of an Internet search engine—just as TVBytes does on its homepage—but the court determined that its services were not. *Id.* at *13. Instead, the court determined that the defendant's service was nothing more than another in a long line of infringing news clipping services. *Id.* at *16 (citing *Video Pipeline, Inc. v. Buena Vista Home Entm't, Inc.*, 342 F.3d 191, 199 (3d Cir.2003) (clip previews of movies); *Nihon Keizai Shimbun, Inc. v. Comline Business Data, Inc.*, 166 F.3d 65, 72 (2d Cir.1999)

KIRKLAND & ELLIS LLP

Mr. David Ives
April 16, 2013
Page 2

(abstracts of news articles); *Infinity Broadcast Corp. v. Kirkwood*, 150 F.3d 104, 108 (2d Cir.1998) (radio monitoring service); *Los Angeles News Service v. Tullo*, 973 F.2d 791, 797, 799 (9th Cir.1992) (video news clipping service.); *Pacific and Southern Co., Inc. v. Duncan*, 744 F.2d 1490, 1496 (11th Cir.1984) (TV news clipping service)). Moreover, the court found that the defendant's use had a strong effect on the market and the value of the AP's works, particularly because it directly competed with the AP's use and interfered with the AP's ability to receive licensing revenue for its works. *Id.* at *21.

Similarly, here, TVEyes's service is no more than a traditional video clipping service made available over the Internet. Further, its use of the Fox News Content directly competes with Fox News's own use and its ability to license the Fox News Content to others. Thus, it is clear that TVEyes's use of the Fox News Content constitutes copyright infringement.

Accordingly, we demand that you immediately cease any further use or distribution of the Fox News Content through your website or through any other means. Failure to do so would make you accountable, under federal law, for statutory damages, compensatory damages, disgorgement of profits, and costs and attorneys' fees. 17 U.S.C. §§ 504, 505.

Please contact me or my colleague Joshua Simmons at joshua.simmons@kirkland.com or (212) 446-4989 immediately to let us know that you will comply with our request. We hope this can be resolved amicably.

* * *

Nothing contained in this letter is intended as or should be construed to be a waiver or relinquishment of any right or remedy held by our client, all of which are hereby expressly reserved.

Sincerely,



Dale Cendali